



***Memorandum***

January 26, 2006

**SUBJECT: Earmarks in Appropriation Acts: FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, FY2005**

**FROM: CRS Appropriations Team**

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This memorandum originally was prepared in response to a request for CRS to quantify earmarks in regular annual appropriations acts. With the consent of the requester, our findings are being released for distribution to all congressional offices because of the continuing interest within Congress concerning earmarking trends in recent years.

We reviewed the appropriations bills annually considered by Congress to determine the number and dollar amount of earmarks included in the enacted bills and the conference reports accompanying them, and what percentage the earmarked funds represented of total funding in the bills. We reviewed the appropriations acts and conference reports for FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, and FY2005. For bills not enacted separately, we used the pertinent consolidated appropriations act and the relevant conference reports as our source. For some of the years, the appropriations acts contained across-the-board rescissions but did not reflect the calculation in individual discretionary accounts. For this reason, the data in this memorandum do not reflect these rescissions.

Within each entry is a discussion of which agencies and programs were funded in the bill, how the term *earmark* is defined for the analysis of that particular appropriation bill, and *estimates* of the number of earmarks and proportion of total funding represented in each year. For some entries there are also disclaimer sections highlighting particular issues with measuring earmarks in a given appropriation bill and why the estimates should not be regarded as definitive. All sections contain a table summarizing our findings for the seven specified years.

**Department of Homeland Security.** We prepared separate entries for each of the 13 appropriation bills in existence during most of the period examined. (See “Contents.”) However, we did not include a separate entry for the Department of Homeland Security appropriations bill. The Department of Homeland Security (DHS) was created by the

Homeland Security Act of 2002 (P.L. 107-296) on November 25, 2002. The House and Senate Appropriations Committees subsequently created, in 2003, subcommittees on Homeland Security. In comparing earmarks across fiscal years, to maintain consistency with our previous research, we have relied upon the subcommittee structure of the Appropriations Committees prior to establishment of DHS. Consequently, we maintain separate entities for Treasury and Transportation appropriations. However, FY2004 marked the first appropriation for DHS, and we also have endeavored to identify earmarks for that year and FY2005 from the pertinent appropriations act and accompanying conference report. For each of FY2004 and FY2005, nine earmarks were identified. In FY2004, the nine earmarks amounted to approximately \$44 million, or 0.1% of the \$30.4 billion total appropriation for that year. In FY2005, the nine earmarks amounted to approximately \$33 million, or 0.1% of the \$30.6 billion total appropriation.<sup>1</sup>

Further, in 2005 both Appropriations Committees undertook major reorganizations that eliminated three subcommittees in the House and one in the Senate and changed subcommittee jurisdictions. These changes were effective for the FY2006 appropriations process. As the changes were implemented subsequent to the enactment of bills for the fiscal years examined, they are not reflected here.

**Earmark Definition Issues.** One of the principal challenges to measuring earmarks in appropriation bills is defining the term and applying it consistently to the analysis. There is not a single definition of the term *earmark* accepted by all practitioners and observers of the appropriations process, nor is there a standard earmark practice across all appropriation bills. In the broadest definition, according to Congressional Quarterly's *American Congressional Dictionary*, "virtually every appropriation is earmarked."<sup>2</sup> In practice, however, earmarks generally are defined more narrowly, often reflecting procedures established over time that may differ from one appropriation bill to another. For some bills, an earmark may refer to funds set aside within an account for a specified program, project, activity, institution, or location. In others, the application may reflect a more narrow set of directives to fund *individual* projects, locations, or institutions.<sup>3</sup> The Office of Management and Budget (OMB) uses a different definition of earmarks, namely specified funds for

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<sup>1</sup> For information on DHS appropriations and related issues in FY2005, see CRS Report RL32302, *Appropriations for FY2005: Department of Homeland Security*, by Jennifer E. Lake and Blas Nunez-Neto. For other information on DHS appropriations, contact Jennifer E. Lake at 7-0620 or Blas Nunez-Neto at 7-0622.

<sup>2</sup> Congressional Quarterly, *American Congressional Dictionary*. Available at [<http://www.crs.gov/products/guides/glossary/e.shtml>] on October 11, 2005.

<sup>3</sup> CRS Report 98-518 Gov, *Earmarks and Limitations in Appropriation Bills*, by Sandy Streeter.

projects, activities, or institutions not requested by the executive, or add-ons to requested funds which Congress directs for specific activities.

Because of the varying ways that earmarks are defined and applied in appropriation bills, we have not attempted to combine and summarize earmarks for the 13 appropriation acts covered. Rather, separate entries for each bill define, for the purpose of that bill only, how earmarks are counted and discuss other characteristics that are pertinent to the practice of earmarking in the individual bill. To the greatest extent possible, we have maintained a consistent definition of earmarks *within each entry*, so that even in the absence of universally accepted terminology, the data were collected using common methodology for the seven years examined and provide valid reference points for comparison in each bill. Nevertheless, we realize that other assessments would likely conclude with different results because of the uncertainties over definitions and methodology. It is important to note that we have not aggregated the data presented for the 13 appropriations acts, because varying definitions and methodologies applied could render such a total invalid.

**Coverage of Relevant Documents.** For each year, we systematically reviewed only the enacted appropriations bill and the joint explanatory statement of the conference committee. As noted throughout the individual entries, this approach likely has the effect of understating earmark totals. For some bills, many earmarks are included only in the House and Senate Appropriations Committee reports issued prior to floor debate in the separate chambers. In some cases, the Appropriations Committees expect executive agencies to adhere to House and Senate directives in the committee reports unless stated otherwise in the joint explanatory statement or the statutory language. Because of the historical use of House and Senate Appropriations Committee reports for earmarks for some agencies of the U.S. Department of Agriculture, the entry for Agriculture Appropriations includes such earmarks in its estimates. The entry for Foreign Operations also notes the significance of House and Senate committee reports for earmarks. In general, however, it should be assumed that for many bills the earmark estimates could understate at least to some degree the complete total.

**Other Limitations.** Beyond the issues of varying definitions and incomplete coverage, other limiting factors should be noted.

- In a number of cases, imprecise or unclear bill and report language required a subjective decision concerning whether to include an earmark, and at what amount. Generally, in such instances an agency is likely to consult with the relevant subcommittee to determine congressional intent.
- By examining only the enacted bills and the conference reports, subsequent steps in the legislative process were not taken into account. Subsequent rescissions or supplementals could have altered an earmark included in the regular appropriation bill before it was implemented.
- Funding ceilings, using terms such as “up to” a specified amount, can be considered in some cases, depending on the context, as an earmark, and in other cases as a limitation. The decision whether to include such items in the estimates varied among the bills depending on the circumstances and practices of the particular act.
- Dollar amounts of total appropriations and earmarks are stated in current year dollars and do not take into account the effects of inflation over time.

Therefore, caution should be used when comparing dollar values of earmarks. A more useful measure of comparison that takes into account the inflation factor would be a comparison of the percentage of the total appropriation represented by earmarks, which is given in the tables at the end of each section.

In sum, this analysis should be regarded as an illustrative estimate of the number and dollar amount of earmarks for the seven years presented. The results would be different with alternative definitions, methodologies, and items included. Nevertheless, we have strived to apply consistent standards within each entry. Thus, the data may provide useful information comparing the practice of earmarking in individual appropriation bills. For additional information on earmarks, contact the authors listed at the end of each entry. For information on current appropriations activity, including on FY2006 bills, see “Appropriations” on the CRS website at [<http://www.crs.gov/>].

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## Agriculture Appropriations

**Scope.** The FY2005 Agriculture Appropriations Act provided funding for all of the U.S. Department of Agriculture (except the Forest Service, which is funded through the annual Interior Appropriations Act), and also included funding for the Food and Drug Administration (within the Department of Health and Human Services) and the Commodity Futures Trading Commission. For general information and issues on agriculture appropriations for FY2005, see CRS Report RL32301, *Appropriations for FY2005: U.S. Department of Agriculture and Related Agencies*, coordinated by Ralph M. Chite.

**Earmarks.** For the purpose of this analysis, an earmark is defined as any designation in the annual appropriations act or accompanying conference report which allocates a portion of the appropriation for a specific project, location, or institution.

The vast majority of earmarks in the annual Agriculture Appropriations Acts are found in approximately 12 accounts within the following USDA agencies: 1) USDA's agricultural research agencies (Agricultural Research Service and Cooperative State Research, Education and Extension Service); 2) USDA's Natural Resources Conservation Service (NRCS); 3) various USDA rural development agencies (particularly the Rural Community Advancement Program (RCAP)); and 4) USDA's Animal and Plant Health Inspection Service (APHIS).

One exception to the above earmark definition is the figure included for the Agricultural Research Service (ARS) Salaries and Expenses account. Conference and committee reports refer to earmarks in this account but do not detail the total amounts available for each project. Consequently, data provided by the ARS budget office are used as a proxy for ARS earmarks. These data include the number and amount of earmarks requested by the President and funded by Congress, and the number and amount of projects funded by Congress but not requested by the Administration.

It also should be noted that in recent years, many of the NRCS projects for which funds are earmarked are mentioned in the House and/or Senate Appropriations Committee reports to the bills, but are not addressed specifically in the conference report or the statute. However, the conference report specifically states that any items addressed in either committee report, but not mentioned or resolved in the conference report, are considered adopted as reported. A detailed list of NRCS earmarked projects was provided by the NRCS budget office for FY1998, FY2002, FY2004, and FY2005. All congressionally earmarked NRCS projects on this list and those compiled by CRS for FY1994, FY1996 and FY2000, including those not specifically addressed by conferees, are included in the earmark count.

**Estimates.** Using the above definition of an earmark, the agriculture portion (Division A) of the FY2005 Consolidated Appropriations Act (P.L. 108-447) is estimated to contain approximately 704 earmarks totaling \$500.5 million. The number and dollar amount of earmarks in FY2005 are relatively close to the level in the FY2004 appropriations act and reports. Both years are nearly double the 359 earmarks totaling \$271.2 million in the FY2000 act and reports. In FY1994, FY1996, FY1998, and FY2000, the dollar volume of earmarks comprised approximately 1% to 2% of each year's total regular agriculture

appropriations. That share rose to 3.5% in FY2002, and fell to 3.0% in both FY2004 and FY2005.

**Disclaimer.** While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions and methodologies for identifying earmarks, and the lack of clarity of some of the language in the documents consulted could contribute to different research results.

### **Agriculture Appropriations** **Summary of Estimated Earmarks** (millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$16,833	\$500.5	3.0%	704
2004	\$16,943	\$500.4	3.0%	660
2002	\$16,018	\$558.8	3.5%	629
2000	\$13,988	\$271.2	1.9%	359
1998	\$13,751	\$286.5	2.1%	284
1996	\$13,310	\$165.6	1.2%	211
1994	\$14,500	\$218.6	1.5%	313

**Sources:** Table includes number and valuation of earmarks listed in the appropriations acts of FY2005 (P.L. 108-447), FY2004 (P.L. 108-199), FY2002 (P.L. 107-76), FY2000 (P.L. 106-78), FY1998 (P.L. 105-86), FY1996 (P.L. 104-37), and FY1994 (P.L. 103-111) and their accompanying conference reports.

**Notes:** Earmarks are defined as any designation in an appropriation act or its accompanying conference report which allocates a portion of an appropriation for a specific project, location or institution, with the exception of those earmarks identified for USDA's Agricultural Research Service (ARS), Salaries and Expenses account. The total amount of earmarks to ARS Salaries and Expenses could not be directly derived from bill or report language. Data were provided by the ARS budget office on the number and amount of specific projects requested by the President and funded by Congress, and for projects funded by Congress but not requested by the Administration. The sum of these two figures represents the earmark number and amounts for this ARS account.

Many of the identified earmarks for USDA's Natural Resources Conservation Service (NRCS) appeared in either the House or the Senate Appropriations Committee report, but were not addressed in the conference report. The conference reports in recent years state specifically that any amounts designated in House and/or Senate committee reports that are not addressed by the conferees are considered adopted. All figures for FY1998, FY2002, FY2004, and FY2005 NRCS earmarks were provided by the NRCS budget office. All other years' earmarks were derived by CRS.

Virtually all designated earmarks are from discretionary spending, hence the percentage is calculated relative to total discretionary spending in the act. Mandatory spending represents nearly three-fourths of the spending in the annual agriculture appropriations act, but is not included in the total.

## **Contributors**

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## Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations

**Scope.** The FY2005 Commerce, Justice, State, the Judiciary and Related Agencies (CJS) appropriations included funding for these three major departments and the Judiciary, plus appropriations for 25 smaller independent agencies. The FY2005 CJS appropriation was Division B of the Consolidated Appropriation Act, FY2005 (P.L. 108-447). For more information on CJS FY2005 appropriations and issues, see CRS Report RL32309, *Appropriations for FY2005: Commerce, Justice, State, the Judiciary, and Related Agencies*, coordinated by Ian F. Fergusson and Susan B. Epstein.

**Earmarks.** Earmarks within the CJS appropriations include any congressional set-aside for a specified program, project, activity, institution, or location. Within the Department of Commerce, the bulk of the earmarks in FY2005 were for the Bureau of the Census, the National Oceanic and Atmospheric Administration (NOAA), and the International Trade Administration. In past years, about 90% of the Department of Commerce's earmarks were within NOAA (except for FY2000, when the Census Bureau appropriation contained a number of earmarks). Typically, the majority of earmarks within the Department of Justice involve State and Local Law Enforcement Assistance, Community Oriented Policing Services (COPS), and the juvenile discretionary grants. In FY2005, as in FY2004, a substantial amount of money was specified for counter-terrorism activities. Most of the earmarks within the FY2005 Department of State title were for specific spending within the Diplomatic and Consular Programs, as well as for the cultural exchanges, while the Judiciary has only two program-related earmarks. Within the Related Agencies title of CJS, nearly all of the FY2005 earmarks occurred within the Small Business Administration. The CJS Act also typically includes numerous spending ceilings for specified activities. In those cases, however, since the agency retains the discretion over how much funding, if any, to allocate up to that ceiling, these provisions are not counted as earmarks.

**Estimates.** Division B, the CJS portion of the Consolidated Appropriation Act for FY2005, contained 1,722 earmarks, an 18% increase in the number of earmarks from the FY2004 appropriation. The value of the FY2005 earmarks represented a 2.5% decrease from the earmark value of the previous year. In addition, the value of earmarks made up a slightly smaller percentage of the total CJS appropriation in FY2005 than that of FY2004 (21.8% versus 23.8%). The percentage of the FY2005 earmarks was not that different from what it was in FY2004; in FY1996, the percentage of earmarks was just over 9% of the total CJS appropriation. When comparing the number of FY2005 earmarks with those of 10 years ago, however, the contrast is striking. The number of FY2005 CJS earmarks was more than ten times what it was in FY1996, while the value of earmarks was nearly four times that of a decade ago.

**Disclaimer.** Unlike accounts and corresponding appropriations, not all earmarks for specific recipients are readily identifiable in an appropriations bill. Opinions can differ regarding a particular allocation as to whether it should be counted as an earmark or is rather a reservation of funds for an authorized program. For these estimates, we have limited our research to the actual public law and the corresponding conference report. Making a more definitive determination would involve checking and comparing a series of other documents

including the report language of the House and Senate Appropriations Committees, the agency budget justifications, similar documents from the preceding fiscal year, and possibly the statutory language for the given program.

**Commerce, Justice, State, the Judiciary and Related Agencies  
Appropriations  
Summary of Estimated Earmarks  
(millions of current dollars)**

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005 <sup>4</sup>	\$43,682	\$9,516.3	21.8%	1,722
2004	\$41,042	\$9,757.6	23.8%	1,454
2002	\$41,635	\$6,394.9	15.4%	1,111
2000	\$39,601	\$8,197.5	20.7%	361
1998	\$31,817	\$3,985.8	12.5%	275
1996	\$27,841	\$2,521.5	9.1%	171
1994	\$23,397	\$2,700.7	11.5%	253

**Sources:** Number and valuation of earmarks in FY2005 (Div. B, P.L. 108-447), FY2004 (Div. B, P.L. 108-199), FY2002 (P.L. 107-77), FY2000 (P.L. 105-277), FY1998 (P.L. 105-119), FY1996 (P.L. 104-134), and FY1994 (P.L. 103-121) Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Acts and the accompanying conference reports.

### **Contributor**

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<sup>4</sup> The FY2005 figures differ from earlier CRS research on this subject due to revisions.

## Defense Appropriations

**Scope.** The FY2005 defense appropriations bill provided funds for military activities of the Department of Defense (DOD), including pay and benefits of military personnel, operation and maintenance of weapons and facilities, weapons procurement, and research and development, as well as for other purposes. Most of the funding in the bill is for programs administered by the Department of Defense, though the bill also provides relatively small, unclassified amounts for the Central Intelligence Agency retirement fund and intelligence community management, classified amounts for national intelligence activities administered by the National Intelligence Director, the CIA, and by other agencies as well as by DOD, and very small amounts for some other agencies. For general information on FY2005 defense appropriations, see CRS Report RL32305, *Authorization and Appropriations for FY2005: Defense*, by Stephen Daggett and Amy Belasco.

**Earmarks.** Conference committee reports on defense appropriations bills allocate funds to particular programs in great detail, specifying, for example, how many weapons of what types are to be procured or how much money is available for recruiting. If earmarking is defined broadly, therefore, virtually all funds in defense bills are fully earmarked. Usually, however, in the case of defense-related legislation, the term *earmark* is used to mean allocating funds at a level of specificity below the normal line item level. Understood in this way, a congressional committee would not be said to earmark funds if it adds money to buy additional fighter aircraft, for example, but would be said to earmark funds if it specifies that a particular kind of radar is to be incorporated into an aircraft upgrade program. This assessment uses the more narrow definition of an earmark. Within military personnel and operation and maintenance accounts, statutory provisions or conference committee report language that allocate funding to specific locations, institutions, or activities are counted as earmarks. Within procurement and Research, Development, Test, and Evaluation (RDT&E) accounts, congressional additions at the *project* level are identified as earmarks, provided the project level changes did not involve simply adding items to be procured or accelerating the pace of an ongoing research program.

**Estimates.** The number of congressional earmarks — defined narrowly as an allocation of funds at a level of specificity below the normal line item level — in the defense appropriations bill appears to have grown significantly between FY1994 and FY2005 — from about 587 earmarks in FY1994 to 644 in FY1998, 997 in FY2000, 1,409 in FY2002, 2,208 in FY2004, and 2,506 in FY2005. The amount of money earmarked in this way also grew, from about \$4.2 billion in FY1994 to \$4.4 billion in FY1998, \$6.1 billion in FY2000, \$7.2 billion in FY2002, \$8.5 billion in FY2004, and \$9.0 billion in FY2005. The amounts earmarked by this definition climbed from about 1.8% of the total money in each bill in FY1994 and FY1998 to about 2.3% in FY2000, FY2002, FY2004, and FY2005. FY1996 appears to be at odds with the general trend. There were considerably fewer earmarks in FY1996 than in FY1994 or FY1998, constituting a smaller absolute amount of money and a smaller share of the overall defense budget. No one factor appears to explain the longer-term trend. One would expect a larger number of such earmarks in a year when Congress added substantial amounts to an Administration request, as occurred in FY1998 and FY2000. However, Congress did not add substantial amounts in FY2002, FY2004, or FY2005, and

the number of earmarks nonetheless continued to climb, though the value of earmarks remained stable as a share of total funding.

**Disclaimers.** For procurement and RDT&E accounts, earmarks, defined narrowly, can be identified in a straightforward manner, since appropriations conference report language specifically lists congressional changes to budget requests at the project level. For other accounts, however, different analysts, even using a narrow definition of earmarks, might count some items differently. This analysis did not count as an earmark congressional additions of funds for a broad category, such as depot maintenance or real property maintenance, if bill or report language did not further specify how funding would be allocated. It did count an addition as an earmark, however, if increased funding specifically was provided for increased depot maintenance for a particular weapon system or for real property maintenance at a particular facility. Perhaps most importantly, this analysis did not count congressional additions of funds at the line item level as earmarks, though others might choose to do so. If such additions are counted as earmarks, a much larger amount of money would appear to be earmarked each year.

**Defense Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as a % of total appropriation</b>	<b>Number of earmarks</b>
2005 <sup>a</sup>	\$391,170	\$9,010.6	2.30%	2,506
2004	\$368,712	\$8,481.9	2.30%	2,208
2002	\$317,624	\$7,235.2	2.28%	1,409
2000	\$267,795	\$6,115.9	2.28%	997
1998	\$247,709	\$4,366.3	1.76%	644
1996	\$243,251	\$2,829.4	1.16%	270
1994	\$240,570	\$4,230.0	1.76%	587

**Sources:** Number and valuation of earmarks listed in FY2005 (P.L. 108-287), FY2004 (P.L. 108-87), FY2002 (P.L. 107-117), FY2000 (P.L. 106-79), FY1998 (P.L. 105-56), FY1996 (P.L. 104-61), and FY1994 (P.L. 103-139) Department of Defense Appropriations Acts and the accompanying conference reports — H.Rept. 108-622, H.Rept. 108-283, H.Rept. 107-350, H.Rept. 106-371, H.Rept. 105-265, H.Rept. 104-344, and H.Rept. 103-339 respectively.

a. Does not include emergency appropriations for Iraq, Afghanistan, and other purposes provided in a separate Title in the FY2005 bill.

**Contributor**

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## District of Columbia Appropriations

**Scope.** The FY2005 District of Columbia Appropriations Act provided general and special payments for the District of Columbia. The act also allowed Congress — as part of its legislative oversight responsibilities — to review and ratify the District’s general operating budget, which is financed through local revenues. For the purpose of this summary, only the portion of the District’s budget covering general and special federal payments is reviewed. The District of Columbia general operating budget is not included in this review. For general information on District of Columbia funding and issues during FY2005, see CRS Report RL32313, *Appropriations for FY2005: District of Columbia*, coordinated by Eugene Boyd.

**Earmarks.** For the purpose of the District of Columbia appropriations, an earmark is defined as any allocation of an appropriation that directs a specified amount of federal funds to a specific activity or account to be carried out by a designated governmental or non-governmental entity identified in the act or its accompanying conference report. It is distinguished from a set-aside which allocates a portion of an appropriation for a specific activity, account, or program, but does not specify the recipient of the allocation or, in some instances, the purpose for which funds will be used. An earmark goes one step further and identifies a final or end-recipient of some portion of the funds set aside for a particular activity or account. An earmark is further characterized by an absence of discretion in the distribution, allocation, or award of funds at the account or program level.

**Estimates.** Using the definition specified, the District of Columbia Appropriations Act for FY2005 contained approximately 95 earmarks totaling \$94.0 million, with 17% of the bill being earmarked. These figures represent the largest number of earmarks, dollar value of earmarks, and percent of total funds earmarked for the fiscal years examined. For FY2005, a significant portion of the earmarks are for education within the District.

District of Columbia Appropriations Act for FY2004 contained approximately 78 earmarks totaling \$65.5 million. For FY2002, there were 41 earmarks that totaled \$65.0 million. The FY2000 appropriations act included 16 earmarks that totaled \$19.2 million. For the District of Columbia Appropriations Act for FY1998, there were three earmarks that totaled \$23.0 million. For FY1996 and FY1994, there were no earmarks.

**Disclaimer.** The above estimates of earmarks should not be regarded as definitive. Despite a comprehensive effort to provide a reliable count, the possible ambiguities in the documents used, plus differences in definitions and counting methods, could produce different estimates. Besides appropriations acts and their conference reports, determination on any given earmark might involve the consideration of report language of House and Senate Appropriations Committees, agency budget justifications, similar documents from the preceding fiscal year, statutory authorization language, and supplemental appropriations or rescissions.

**District of Columbia Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$542	\$94.0	17.3%	95
2004	\$545	\$65.5	12.0%	78
2002	\$408	\$65.0	15.9%	41
2000	\$444	\$19.2 <sup>a</sup>	4.3%	16 <sup>a</sup>
1998	\$835	\$23.0	2.8%	3
1996	\$660	\$0.0	0.0%	0
1994	\$700	\$0.0	0.0%	0

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-335), FY2004 (P.L. 108-7), FY2002 (P.L. 107-96), FY2000 (P.L. 106-113), FY1998 (P.L. 105-100), FY1996 (P.L. 104-134) and FY1994 (P.L. 103-127) District of Columbia Appropriations Acts and the accompanying conference reports.

a. P.L. 106-113, Consolidated Appropriations Act for FY2000, includes language that amends P.L. 106-74, the VA-HUD-Independent Agencies Appropriations Act for FY2000, to include \$8.475 million in earmarks for 11 Economic Development Initiative projects identified in the District of Columbia section of the Consolidated Appropriations Act for FY2000.

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## Energy and Water Development Appropriations

**Scope.** The FY2005 Energy and Water Development Appropriations Act included funding for civil works projects of the Army Corps of Engineers, the Department of the Interior's Bureau of Reclamation (BOR), most of the Department of Energy (DOE), and a number of independent agencies. For general information on FY2005 Energy and Water Development Appropriations laws and issues, see CRS Report RL32307, *Appropriations for FY2005: Energy and Water Development*, coordinated by Carl Behrens.

**Earmarks.** The Energy and Water Development appropriations laws and accompanying conference reports identify funding levels for the numerous programs, projects, activities, and subactivities of the agencies. In addition, they contain tables that identify specific funding levels for individual projects, locations, and institutions. In the broadest sense, an earmark may refer to "funds set aside within an account for a specified purpose." By this definition, most energy and water accounts are earmarked, as funds within each account typically are specified for particular purposes at specific locations.

Alternatively, the term also may refer more narrowly to set-asides within an account for individual projects, locations, or institutions. By this definition, many energy and water accounts also are earmarked, as funds within each account typically are specified for particular projects, locations, or institutions. This is particularly true for the water agencies (BOR and Corps), where the conference report specifies funds for site-specific projects and purposes in numerous tables. This summary generally uses this latter definition for earmark.

An attempt was made in compiling the data to exclude funding for general programs and activities. The difficulty, however, in distinguishing these categories in many cases from projects, locations, and institutions makes any such distinction somewhat subjective. In cases where program funding would be directed to individual projects, locations, or institutions by the bill or conference report, the item is included as an earmark.

The reported figures for most fiscal years do not reflect any earmarks that may be included in sources other than the regular annual appropriations laws and accompanying conference reports (e.g., supplemental appropriations laws or emergency supplemental laws). Similarly, they generally do not reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). In addition, there has been no examination of the House and Senate Appropriations Committee reports on the measures enacted into law. It is worth noting that the explanatory statements for all seven years examined seek to incorporate by reference language included in these House and Senate Appropriations Committee reports. The explanatory statements state that report language and allocations in either the House or Senate Appropriations Committee reports that are not contrary to the conference committee report are approved by the conference committee. They elaborate that while the conference reports repeat some of the language in the House and Senate committee reports for emphasis, the conference reports do not negate the language unless a change is expressly stated. Thus, House and Senate Appropriations Committee reports may contain additional provisions that could be treated as earmarks. In addition, items have been included as earmarks for projects, locations, or institutions regardless of their origin or current status.

**Estimates.** An examination of the regular annual Energy and Water Development Appropriations conference reports including the joint explanatory statements for FY2005, FY2004, FY2002, FY2000, FY1998, FY1996, and FY1994 reveals that earmarks are relatively rare in the text of the laws themselves (albeit more common in Titles I and II of the act). However, the accompanying joint explanatory statements of the conference reports contain numerous earmarks. While the explanatory statements do not have the force of law, they provide explanations of the intent of the bill language for the guidance of executive agency decisions and courts.

For the annual Energy and Water Development Appropriations laws, most of the earmarks are included in tables within the joint explanatory statements. Some tables include hundreds of line items listing funding for specific projects, programs, and activities. Our examination of the annual Energy and Water Development Appropriations laws shows that approximately 24.8% of the funding was directed to individual projects, institutions, and locations for FY1994, 18.5% was so directed for FY1996, 28.8% for FY1998, 19.8% for FY2000, 30.3% for FY2002, 19.3% for FY2004, and 17.3% for FY2005. While the percentage of funds earmarked for FY2005 is the smallest of the years examined, the number of earmarks (2,313) is the highest of the years reviewed.

Considerably different findings are likely to result when using different definitions of an earmark. For example, preliminary analysis of one agency's appropriation for FY2002 showed a vast range of results derived under varied definitions and methodologies. Initial research on the BOR for FY2002 revealed a possible range in earmarks from 5% to 78%, depending on how the term *earmark* is defined. Similarly, initial research on the Corps' appropriation for that year showed a range of 9% to 78%, and on Title III of the bill (Department of Energy), the same analysis yielded a range of 2% to 17%. For the bill as a whole,<sup>5</sup> the resulting range was between 3% and 30%.

**Disclaimer.** While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted could contribute to different research results.

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<sup>5</sup> Because of its small size in relation to the rest of the bill, Title IV (Independent Agencies) is not included in these figures. Its inclusion would likely alter the results minimally.



**Energy and Water Development Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks<sup>a</sup></b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks<sup>a</sup></b>
2005	\$28,488	\$4,920.1	17.3%	2,313
2004	\$27,328	\$5,260.0	19.3%	2,192
2002	\$25,086	\$7,600.0	30.3%	1,437
2000	\$21,730	\$4,303.8	19.8%	1,707
1998	\$21,152	\$6,100.0	28.8%	1,877
1996	\$19,336	\$3,578.3	18.5%	1,431
1994	\$22,215	\$5,500.0	24.8%	1,574

**Sources:** Number and valuation of earmarks listed in FY2005 (P.L. 108-447), FY2004 (P.L. 108-199) and (P.L. 108-137), FY2002 (P.L. 107-66), FY2000 (P.L. 106-60), FY1998 (P.L. 105-62), FY1996 (P.L.104-46), and FY1994 (P.L. 103-126) Energy and Water Development Appropriations and the accompanying conference reports.

a. Earmarks for projects, institutions, and locations included in the joint explanatory statement of conferees. An analysis of earmarks contained in the *text* of the joint explanatory statement pertaining to programmatic, agency-wide, or other sub-account line items for the Corps and BOR was not conducted when data for FY2000, FY1998, and FY1994 were originally collected in 2001. However, a review of such earmarks in the text for those years resulted in a maximum range of an additional \$191 million to \$470 million in earmarks — an amount that would not have significantly changed percentage results for those years. Conversely, for all years “reductions for anticipated savings and slippages” in each account were not proportioned across all earmarks, resulting in a slightly higher percentage total for earmarks.

### **Contributors**

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## Foreign Operations, Export Financing, and Related Programs Appropriations

**Scope.** The Foreign Operations appropriations bill is the primary legislative vehicle through which Congress reviews and votes on the U.S. foreign assistance budget and influences Executive Branch foreign policy-making generally. The bill for FY2005 and prior years funded all U.S. bilateral development assistance programs, managed mostly by the U.S. Agency for International Development (USAID), together with several smaller independent foreign aid agencies, such as the Peace Corps and the Inter-American and African Development Foundations. Beginning in FY2004, the measure has included funding for the State Department's Global AIDS Initiative and the Millennium Challenge Corporation, two new bilateral economic aid programs. Most humanitarian aid activities are funded within Foreign Operations, including USAID's disaster program and the State Department's refugee relief support. Foreign Operations for FY2005 and prior years throughout the 1990s included separate accounts for aid programs in the former Soviet Union and Central/Eastern Europe, activities that are jointly managed by USAID and the State Department.

Security assistance (economic and military aid) also has been part of the Foreign Operations spending measure, administered largely by the State Department, in conjunction with USAID and the Defense Department. Funding for the Iraq Relief and Reconstruction Fund (IRRF), now managed by the State Department, also has fallen under the jurisdiction of the Foreign Operations Subcommittee, although all appropriations to date for the IRRF have come in supplemental measures and not regular annual appropriation bills reviewed for this study. U.S. contributions to the World Bank and regional multilateral development banks, managed by the Treasury Department, and voluntary payments to international organizations, handled by the State Department, also are funded in the Foreign Operations bill. Finally, the FY2005 and prior years' legislation included appropriations for three export promotion agencies: the Overseas Private Investment Corporation (OPIC), the Export-Import Bank, and the Trade and Development Agency. Details on funding, legislation, and issues for FY2005 are provided in CRS Report RL32311, *Appropriations for FY2005: Foreign Operations, Export Financing, and Related Programs*, by Larry Nowels.

Foreign Operations budget justifications provided by the State Department, USAID, and other agencies contain detailed justifications for each account, including illustrative tables for how the agencies would allocate money among some 118 countries and regional programs for each account if Congress approved the full request. The budget justification tables include complete listings for country aid allocations, but only partial listings of activity allocations. The Executive Branch does not ask Congress to specify or direct amounts below the account level for individual activities or aid recipient countries.

**Earmarks.** The practice of congressional earmarking in Foreign Operations has continued for many years. Annual appropriations also usually include General Provisions addressing several issues related to earmarks, including how earmarks apply to the definition of a "program, project, and activity," rules for reprogramming earmarked funds, and how earmarks in the current bill are not applicable to subsequent Foreign Operations acts. In general, the practice of earmarking in Foreign Operations appropriations applies to

congressional directives for allocating funds to specific countries or activities below the account level, and is the definition used in this analysis to estimate the number of earmarks and the proportion of funds in the bill that are earmarked.

Several special characteristics of the practice of earmarking in Foreign Operations bills are worth noting. Some observers define earmarks in a more limited way, identifying only provisions that direct spending for items not requested by the Administration or in excess of levels proposed for activities or countries. Although many Foreign Operations earmarks fall within this more narrow definition, congressional directives specifying spending amounts that are the same as shown in the Administration's illustrative listing for country distributions also are regarded as earmarks. Annual earmarks for economic and military aid to Israel and Egypt are examples of such directives. The Foreign Operations bill may specify amounts for these and perhaps a few other countries at levels proposed by the Administration, but include no directive regarding how the balance of funds appropriated within the account should be distributed for 20 or 30 other countries. If Congress reduces the total account level as it has done frequently, the earmarks for a few countries, even at the amounts requested, require the Administration to cut funds to the non-earmarked countries disproportionate to the overall reduction to the account. This has been a consistent source of tension between the two branches for many years in the discussion of earmarking in Foreign Operations.<sup>6</sup>

Another characteristic of the Foreign Operations appropriations that differs from other spending bills is the distinction between so-called "hard" and "soft" earmarks. Hard earmarks, whether stated in the act or the conference report, require the Administration to spend a specified or "not less than" amount for a certain activity, organization, or country program, using words such as *shall*, *directs*, or *allocates*. A soft earmark, on the other hand, is an expression using terms such as *should*, *urges*, *endorses*, or *recommends*. Since both hard and soft earmarks are an expression of congressional intent, some argue that there is little if any distinction between the two, and the Administration must treat each with equal weight.

Regardless of how the Administration deals with hard and soft earmarks, the practice of earmarking in Foreign Operations bills over the past 25 years suggests that a distinction should be recognized between the two types of earmarks. House Foreign Operations Subcommittee leaders, especially in the last decade, have argued strongly for the reduction of hard earmarks in bills and accompanying House and conference reports. It has been

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<sup>6</sup> As noted below, however, congressional practice in recent years has been to allocate or earmark funds in several key Foreign Operations accounts for all countries and activities receiving assistance under these accounts. This avoids the situation where partial earmarking for only selected countries has an indirect but significant impact on non-earmarked countries and activities. Nevertheless, this technique of fully earmarking several large accounts increases the number of earmarks and their value, as indicated in the table below for FY2004 and FY2005.

common for House-Senate conference committees to change Senate-passed hard earmarks to soft earmarks in the enacted bill or statement of managers. This has not resulted necessarily, however, in more extensive executive branch flexibility in allocating appropriated funds.

Soft earmarks, including those in the statute, conference report, and committee reports, are compiled by executive agencies, and where they seek modifications to congressional targets, Administration officials conduct extensive consultations with the subcommittees in order to reach consensus. It is widely recognized that soft earmarks carry significant weight, if not the same weight, in directing Administration funding allocation decisions. However, because House and Senate Foreign Operations Subcommittees routinely make a distinction between a hard and soft earmark, and imply some greater degree of flexibility for the latter, the table below presents earmarks in two categories: hard earmarks and soft earmarks.

A related issue concerns the relative weight assigned to recommendations set out in House and Senate Appropriations Committee reports. In this analysis, we examined only the enacted bill and the statement of managers included in the conference report. For Foreign Operations, however, many directives and recommendations are added in the House and Senate Appropriations Committee reports, and the committees expect the Administration to be guided by these report statements. If calculated, these would add considerably to the number of earmarks drawn from the enacted bill and the conference report, and shown in the table below.

A further Foreign Operations characteristic is the practice of setting ceilings, or specifying an amount up to which the agencies can fund an activity or country. There appears to be some dispute over whether these ceilings also represent earmarks. USAID officials, for example, assert that in some cases they consider these ceilings as an indication of congressional intent to fund the activity at the maximum level, and that if they propose a reduction below the ceiling, agency staff consult extensively with the committees. Some ceilings, however, appear driven more by Congress' intent to limit amounts the Administration might spend on a given activity than on the desire by Congress to specify a precise amount. Because of the various ways ceilings can be interpreted — as possibly an earmark or a limitation — plus the fact that from a legal standpoint an agency retains discretion over how much to allocate up to the specified ceiling, this type of legislative and conference report language is not included as an earmark in this analysis.

**Estimates.** Using the definition specified, the Foreign Operations Appropriations Act, 2005 (Division D of P.L. 108-447, H.Rept. 108-792), contained approximately 254 hard earmarks and 173 soft earmarks for specific countries, recipients, and activities. Funds associated with these earmarks represented 53.4% and 19.8%, respectively, of the total Foreign Operations funds appropriated in P.L. 108-447. As shown in the table below, the FY2005 Foreign Operations appropriation included by far the largest number of earmarks of any of the seven years assessed, and had the second highest proportion, although only slightly lower than FY2004, of total funds earmarked, hard and soft combined, compared with the other years.<sup>7</sup> The number and dollar volume of earmarks for FY2004 was also substantially higher than the other years examined.

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<sup>7</sup> The percentage of funds earmarked for FY2000 was significantly lower than the other years. This is largely due, however, to inclusion in the FY2000 legislation of a \$17.8 billion IMF appropriation

A major factor explaining why both the number of earmarks and the proportion of the total appropriation represented by earmarks rose in both FY2004 and FY2005 was the inclusion in the conference report of specific country and program allocations for several major accounts in the Foreign Operations bill: Economic Support Fund; Assistance for East European and the Baltic States; Assistance to the Independent States of the Former Soviet Union (FY2005 only); Andean Counternarcotics Initiative (FY2005 only); Non-Proliferation, Anti-terrorism, Demining, and Related Programs; Foreign Military Financing (FY2005 only); and International Organizations and Programs. This was not the case in the five other appropriation bills reviewed where country earmarks were made selectively rather than for entire accounts. The total allocation of these accounts in FY2004 resulted in 104 earmarks, totaling \$3.25 billion. Without this specific distribution for these accounts, the pattern of earmarks in the FY2004 Foreign Operations measure would have been similar to the FY2002 bill.

For FY2005, when more accounts were completely earmarked, the total number and dollar amount of earmarks in these accounts was larger: 191 earmarks, totaling \$9.43 billion. Moreover, the FY2005 appropriation included a new general provision explicitly making the account allocations hard earmarks — stating that amounts “shall be made available for countries and programs” as allocated in conference report tables. This resulted in a sharp rise in the number of hard earmarks for FY2005. The Foreign Operations appropriation for FY2005 also represented the first time that the conference report “endorsed” the lists of university project proposals recommended in House and Senate Appropriations Committee reports, thereby adding 97 soft earmarks that were not included in previous years. Because House and Senate Committees do not assign a dollar amount for suggested university projects, however, this did not affect the value of total earmarks.

Another reason why such a large portion of Foreign Operations is earmarked, not only in the seven years assessed in this review, but generally for the past 25 years, is the inclusion of provisions each year earmarking economic and military aid for Israel and Egypt. These earmarks alone accounted for \$5.1 billion in FY1994, FY1996, and FY1998, \$4.9 billion in

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that had no earmarks attached. IMF quota increases are considered by Congress infrequently — about every five or six years — and were not part of Foreign Operations funding in any of the other years examined. To a certain extent, this distorts the proportion of funds earmarked relative to the other years. If the IMF appropriation is removed from the FY2000 total, however, earmarks would total about 46%, still the lowest level for the seven bills reviewed here.

FY2000, \$4.7 billion in FY2002, \$4.6 billion in FY2004, and \$4.4 billion in FY2005, representing between 41% and 95% of the total amount of hard earmarks. The United States is in the middle of a 10-year plan to reduce aid to Israel and Egypt by \$100 million annually, thus accounting for the declining value of the earmarks since FY1998.

## Foreign Operations, Export Financing, and Related Programs Appropriations

### Summary of Estimated Earmarks

(millions of current dollars)

Fiscal year	Total appropriation	Total \$ value of earmarks	Earmarks as % of total appropriation	Number of earmarks
<b>2005</b>				
Hard earmarks	\$19,737	\$10,547.2	53.4%	254
Soft earmarks	\$19,737	\$3,910.9	19.8%	173
<b>2004</b>				
Hard earmarks	\$17,585	\$8,261.9	47.0%	74
Soft earmarks	\$17,585	\$4,788.9	27.2%	171
<b>2002</b>				
Hard earmarks	\$15,391	\$6,290.4	40.9%	28
Soft earmarks	\$15,391	\$2,061.0	13.4%	91
<b>2000</b>				
Hard earmarks	\$33,330	\$5,271.4	15.8%	28
Soft earmarks	\$33,330	\$1,891.6	5.7%	41
<b>1998</b>				
Hard earmarks	\$13,147	\$6,824.3	51.9%	31
Soft earmarks	\$13,147	\$1,620.3	12.3%	50
<b>1996</b>				
Hard earmarks	\$12,104	\$6,099.0	50.4%	21
Soft earmarks	\$12,104	\$501.8	4.1%	32
<b>1994</b>				
Hard earmarks	\$14,592	\$5,409.0	37.1%	9
Soft earmarks	\$14,592	\$2,541.8	17.4%	29

**Sources:** Number and valuation of earmarks listed in the FY2005 (Division D of P.L. 108- 447), FY2004 (Division D of P.L. 108-199), FY2002 (P.L. 107-115), FY2000 (P.L. 106-113), FY1998 (P.L. 105-118), FY1996 (P.L. 104-107), and FY1994 (P.L. 103-87) Foreign Operations Appropriations acts and accompanying conference reports.

**Note:** Hard earmarks refer to requirements for the Administration to spend specified or “not less than” amounts for a certain activity, organization, or country program, using words in the legislation or conference report such as shall, directs, or allocates. A soft earmark is expressed in the legislation or conference report using terms such as should, urges, endorses, or recommends.

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## Department of the Interior and Related Agencies Appropriations

**Scope.** The FY2005 Department of the Interior and Related Agencies Appropriations bill included funding for the Department of the Interior (DOI), except the Bureau of Reclamation, and funds for some agencies or programs within three other departments — Agriculture, Energy, and Health and Human Services. The bill also included funding for many related agencies. For general information on FY2005 Interior appropriations and related issues, see CRS Report RL32306, *Appropriations for FY2005: Interior and Related Agencies*, coordinated by Carol Hardy Vincent and Susan Boren.

**Earmarks.** The annual DOI and related agencies appropriations laws and accompanying conference reports identify funding levels for numerous programs, activities, and subactivities of the agencies. In addition, they contain provisions that identify the level of funds for individual projects, locations, or institutions, henceforth referred to as earmarks.<sup>8</sup> An examination of the regular, annual DOI and related agencies appropriations acts for FY2005, FY2004, FY2002, FY2000, FY1998, FY1996 and FY1994 reveals that earmarks are relatively rare in the text of the bills themselves. For instance, both the FY2005 and FY2004 acts contain less than 20 such earmarks each. However, the accompanying joint explanatory statements of the conference reports contain numerous additional earmarks. While the explanatory statements do not have the force of law, they provide explanations of the intent of the bill language for the guidance of executive agencies and courts. For each year examined, the act and the joint explanatory statement together contain earmarks for hundreds of individual projects, locations, and institutions.

Many of the earmarks are set out in lists, included in the joint explanatory statements, of individual construction and land acquisition projects for the four land management agencies (National Park Service, Bureau of Land Management, Fish and Wildlife Service, and Forest Service). For instance, the FY2005 joint explanatory statement contains lists of National Park Service funds for 75 construction projects (\$192.4 million), 83 historic preservation “Save America’s Treasures” projects (\$15.0 million), 22 heritage areas (\$14.1 million), and 20 recipients of statutory or contractual aid (\$11.4 million). In contrast, other agencies funded by the FY2005 DOI and Related Agencies Appropriations law have relatively few or no earmarks in the joint explanatory statement or in the law itself.

Included as earmarks are funds for projects, locations, or institutions regardless of their origin or current status. For instance, no attempt has been made to determine whether earmarked funds were requested by the President; added by the House, the Senate, or the

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<sup>8</sup> This definition is derived from CRS Report 98-518, *Earmarks and Limitations in Appropriations Bills*, by Sandy Streeter. That report also contains a broader definition of earmark, namely “any congressional set-aside for a specified program, project, activity, institution, or location,” a definition that is not used in this analysis.

conference committee; provided for authorized purposes; or provided for on-going purposes. Also included are references in the joint explanatory statement to the amount of funding *increases* for particular projects, locations, and institutions.

An attempt was made in compiling the data to exclude funding for general programs and activities, and to delineate projects that directly specify locations and/or institutions. The difficulty, however, in distinguishing general program categories from projects, locations, and institutions makes any such distinction somewhat subjective.

Not reflected are any earmarks that may be included in sources other than the regular annual appropriations laws and accompanying conference reports (e.g., supplemental appropriations laws). Similarly, we did not seek to reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). In addition, there has been no extensive examination of the House and Senate committee reports on the measures enacted into law. It is worth noting that the explanatory statements for all seven years examined seek to incorporate by reference language included in these House and Senate committee reports. The explanatory statements state that report language and allocations in either the House or Senate committee reports that are not changed by the conference committee are approved by the conference committee. They elaborate that while the conference reports repeat some of the language in the House and Senate committee reports for emphasis, the conference reports do not negate the language unless a change is expressly stated. Additionally, in FY2005, some of the entries for earmarks in the conference report provide a comparison between the figures in the House-passed bill and the final conference figures. Generally, however, House and Senate committee reports may contain additional provisions that could be treated as earmarks that are not expressly stated in the conference report.

**Estimates.** For the years examined, the table generally shows a relatively large number of earmarks, but a relatively small percent of funds earmarked of the total appropriation for DOI and related agencies. The number of earmarks in FY2005 falls below the number in FY2004 and FY2002, but is above the number for FY2000, FY1998, FY1996 and FY1994. The FY2005 number of earmarks is more than four times the FY1996 number, which was the lowest number of earmarks of the years examined. With regard to the amount of money earmarked, the dollar amount of earmarks in FY2005 is less than in FY2004, FY2002, FY2000, and FY1998. It is, however, above the dollar amount of earmarks for FY1996 and FY1994. Of those years included in this report, FY2002 had the record dollar amount of Interior earmarks, \$1.06 billion. While the percent of funds earmarked could be regarded as small for all years, it is greatest in FY1998. Included in FY1998 are a few earmarks of large sums, the largest of which is an appropriation of not to exceed \$250 million from the Land and Water Conservation Fund for acquisition of interests to protect and preserve the Headwaters Forest. These few earmarks of large dollar amounts significantly increase the amount of money earmarked in FY1998 and the related percent of funds earmarked of the total appropriation. In contrast, the number of earmarks in FY1996 is lower than all comparative years in part because of a stated policy change in conference language that prohibited the listing of earmarks in land acquisition programs by individual project. In addition, the FY1996 total dollar amounts and number of earmarks are less than all comparative years because the final conference agreement eliminated numerous earmarks contained in initial conference agreements.

***Disclaimer.*** While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. Factors such as the possibility of using different definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted, could contribute to different research results.

**Department of the Interior and Related Agencies Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks<sup>a</sup></b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks<sup>a</sup></b>
FY2005	\$20,045	\$777.1	3.9%	568
FY2004	\$20,171	\$850.6	4.2%	648
FY2002	\$19,158	\$1,065.0	5.6%	636
FY2000	\$14,912	\$959.6	6.4%	479
FY1998 <sup>b</sup>	\$13,791	\$920.7	6.7%	320
FY1996	\$12,540	\$403.4	3.2%	137 <sup>c</sup>
FY1994	\$13,388	\$482.0	3.6%	314

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-447), FY2004 (P.L.108-108), FY2002 (P.L.107-63), FY2000 (P.L. 106-113), FY1998 (P.L. 105-83), FY1996 (P.L. 104-134), and FY1994 (P.L. 103-138) Department of the Interior and Related Agencies Appropriations Acts and the accompanying conference reports.

- a. Earmarks are for projects, institutions, and locations, including projects that directly specify locations and/or institutions.
- b. Included are a few large earmarks for single projects (e.g., one for \$250 million). In contrast, most of the earmarks identified were for relatively small dollar amounts.
- c. The number of earmarks in FY1996 is lower than all comparative years in part because of a stated policy change in conference language (H.Rept. 104-402) that prohibited the listing of earmarks in land acquisition programs by individual project. In addition, the FY1996 total dollar amounts and number of earmarks are less than all comparative years because the final conference agreement eliminated numerous earmarks contained in initial conference agreements.

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## Labor, Health and Human Services, and Education Appropriations

**Scope.** The Labor, Health and Human Services, and Education, and Related Agencies (L-HHS-ED) Appropriations bill for FY2005 provided most of the discretionary appropriations for three federal departments — the Department of Labor (DOL), the Department of Health and Human Services (HHS), and the Department of Education (ED) — as well as the Social Security Administration (SSA) and 15 other related agencies. Of the various annual appropriations bills, the L-HHS-ED bill has represented the largest single source of discretionary funds for domestic federal programs; the Defense bill has been the largest source of discretionary funds among all federal programs. Details for FY2005 L-HHS-ED appropriations, legislation, and issues may be found in CRS Report RL32303, *Appropriations for FY2005: Labor, Health and Human Services, and Education*, by Paul M. Irwin.

**Earmarks.** This summary uses a definition for earmark that is limited to “funds set aside within an account for a specific organization or location, either in the appropriation act or its conference report.” For the most part, the general purpose for each earmark is identified in an authorizing statute, such as projects for “the improvement of postsecondary education,” but the specific recipient is not designated by any legislation outside of the appropriations act or its conference report in which the earmark is made. Such designations generally bypass the usual competitive distribution of awards by a federal agency, but otherwise require recipients to follow standard federal financial and other administrative procedures regarding their use of earmarked funds.

**Estimates.** Using the definition given above, the FY1994 L-HHS-ED appropriations included approximately five earmarks for an estimated \$2.4 million. These earmarks appeared in three accounts: one at DOL and two at HHS. For FY1996, approximately seven earmarks were funded at an estimated \$15 million. For FY1998, approximately 25 earmarks were funded at an estimated \$54 million. For FY2000, approximately 491 earmarks were funded at an estimated \$461 million. For FY2002, approximately 1,606 earmarks were funded at an estimated \$1.0 billion. For FY2004, approximately 2,036 earmarks were funded at an estimated \$875 million. For FY2005, approximately 3,014 earmarks were funded at an estimated \$1.2 billion. In FY2005, earmarks were included in many parts of the bill and its conference report, and were identified in 17 accounts: two at DOL; seven at HHS; seven at ED; and one at the Institute of Museum and Library Services, a related agency. The approximate number of earmarks in the context of the annual L-HHS-ED bills is shown in the table below.

**Disclaimer.** The above estimates and the summary table below should not be regarded as definitive of either the number of earmarks or the funding involved. Despite a comprehensive effort to provide a reliable count, the possible ambiguities in the documents used, plus differences in definitions and counting methods, will produce different estimates of unknown variability. Not reflected in the estimates are report language of House and Senate Appropriations Committees, floor statements, communications between the Administration and committees, agency budget justifications, statutory authorization language, and supplemental appropriations or rescissions.

**Labor, Health and Human Services, and Education Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Estimated number of earmarks</b>
2005	\$497,553	\$1,179.5	0.24%	3,014
2004	\$480,346	\$875.5	0.18%	2,036
2002	\$411,822	\$1,018.7	0.25%	1,606
2000	\$328,230	\$461.0	0.14%	491
1998	\$276,890	\$54.4	0.02%	25
1996	\$265,533	\$14.9	0.01%	7
1994	\$267,903	\$2.4	<0.001%	5

**Sources:** The annual L-HHS-ED bills and conference reports upon which the above numbers are based were as follows: For FY2005, P.L. 108-447 (H.Rept. 108-792); for FY2004, P.L. 108-199 (H.Rept. 108-401); for FY2002, P.L. 107-116 (H.Rept. 107-342); for FY2000, P.L. 106-113 (H.Rept. 106-479); for FY1998, P.L. 105-78 (H.Rept. 105-390); for FY1996, P.L. 104-134 (H.Rept. 104-537); and for FY1994, P.L. 103-112 (H.Rept. 103-275).

### **Contributors**

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## Legislative Branch Appropriations

**Scope.** The FY2005 Legislative Branch Appropriations bill contained discretionary appropriations in 11 accounts for the House of Representatives, the Senate, joint items (entities governed by both the House and Senate), the Capitol Police, the Office of Compliance, the Congressional Budget Office, the Architect of the Capitol, the Library of Congress, the Government Printing Office, the Government Accountability Office, and the Open World Leadership Center. The legislative budget is not large, comprising only 0.16% of the total federal budget. For additional information on FY2005 legislative branch budget requests, appropriations, legislation, and issues, see CRS Reports RL32312, *Appropriations for FY2005: Legislative Branch*, by Paul E. Dwyer.

**Earmarks.** The definition of an earmark for this analysis applies to: (1) funds set aside within an account for a specified recipient, organization, or location, and (2) language that contains recommendations, directives, or suggestions to agencies to apply in either their use of funds or in the administration of their activities. Earmarks are distinguished from language which limits the amount of appropriations that may be spent on an agency's activities, or that limits the purposes for which funds are to be used. Due to the way in which the legislative branch appropriations bill is drafted, there are few earmarks.

The statement of conference managers on the FY1994, FY1996, FY1998, FY2000, FY2002, FY2004, and FY2005 bills contained references to funds for projects, primarily contained in the account of the Architect of the Capitol. However, since it is unclear if all the projects were ones that agencies would not otherwise undertake, we have excluded them. Also excluded are \$70 million in FY2002 funds, \$48.8 million<sup>9</sup> in FY2004 funds, and \$10.6 million<sup>10</sup> in FY2005 funds for the Capitol Visitor Center project.

The statement of managers on the FY2005 bill contained the following Capitol projects under the Architect of the Capitol account: General Administration, \$2.9 million for three projects; Capitol Building, \$14.0 million for eight projects; Capitol Grounds, \$465,000 for five projects; Senate Office Buildings, \$10.0 million for 15 projects; House Office Buildings, \$27.5 million for 10 projects; Capitol Power Plant, \$3.8 million for six projects; Library Buildings and Grounds, \$22.6 million for 13 projects; Capitol Police Buildings and Grounds, \$1.0 million for two projects; and Botanic Garden, \$543,000 for two projects. Total FY2005 funding for the aforementioned 64 projects was \$82.8 million.

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<sup>9</sup> This figure contains \$36.8 million in new appropriations and \$12 million transferred from the Capitol Police Buildings and Grounds account.

<sup>10</sup> This amount was transferred within the Capitol Building account.

**Estimates.** When using the definition specified above, the regular annual Legislative Branch Appropriations Acts contained one earmark in FY1994, one in FY1998, four in FY2002, three in FY2004, and six in FY2005. No earmarks were identified for FY1996 and FY2000.

**Disclaimer.** In addition to language in an appropriation act and its conference report, earmarks may be located in the reports of the House and Senate Appropriations Committees accompanying the bills and justifications of legislative branch agencies. For purposes of this research, we examined only the FY2005, FY2004, FY2002, FY2000, FY1998, FY1996, and FY1994 regular annual appropriation acts and their conference reports.

**Legislative Branch Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$3,575	\$3.85	0.11%	6
2004	\$3,548	\$1.25	0.04%	3
2002	\$3,252	\$2.8	0.09%	4
2000	\$2,486	0	0	0
1998	\$2,288	\$1.3	0.06%	1
1996	\$2,184	0	0	0
1994	\$2,271	\$0.5	0.02%	1

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-447), FY2004 (P.L. 108-83), FY2002 (P.L. 107-116), FY1998 (P.L. 105-55), and FY1994 (P.L. 103-112) Legislative Branch Appropriations Acts and the accompanying conference reports.

### Contributors

- Paul E. Dwyer, Specialist in American National Government, 7-8668.
- Ida A. Brudnick, Analyst in American National Government, 7-6460.



## Military Construction Appropriations

**Scope.** The FY2005 Military Construction (MilCon) appropriations bill provided a large part of the funding to enhance and maintain an infrastructure of more than 40,000 square miles and \$500 billion in physical facilities. The bill paid for construction projects and property maintenance of the active Army, Navy and Marine Corps, Air Force, and their reserve components (including both federal reserve and National Guard); additional defense-wide construction; U.S. contributions to the NATO Security Investment Program (NSIP, formerly known as the NATO Infrastructure Program); and military family housing operations and construction. The bill also provided funding for Base Realignment and Closure (BRAC) accounts, which in FY2005 financed environmental cleanup at closed sites.

Details of military construction and military family housing funding during FY2005 are found in CRS Report RL32310, *Appropriations for FY2005: Military Construction*, by Daniel H. Else.

**Earmarks.** The bulk of the Administration's budget submission listed specific requests within accounts for individual construction projects at particular locations.<sup>11</sup> The House and Senate Appropriations Committees mirror the Administration by listing budget authority for individual projects in detailed tables included in the joint explanatory statement accompanying the bill. For the purposes of this memorandum, military construction *earmarks* are funds identified as "set-asides for individual projects, locations, or institutions." Therefore, only those funds designated for unspecified locations, the undifferentiated BRAC accounts, the NSIP, and a few miscellaneous temporary accounts would not be considered as earmarks.

Broad characteristics of selected recent military construction appropriations acts are given in the table below. Two points should be kept in mind as they are reviewed:

- Military construction appropriations can routinely be obligated for up to five years, and none of the figures in this memorandum takes into account rescissions (revocations and cancellations) within specific projects or

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<sup>11</sup> 10 U.S.C. §2802(a) states that "the Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects as are authorized by law." This provision was added by the enactment of P.L. 97-214, §2(a) on July 12, 1982. This is generally interpreted as requiring that specific projects and the necessary appropriations be specified as individual line items in the appropriations request and the authorization and appropriations bills.

general (unspecified or across-the-board) reductions made in the appropriation bills.<sup>12</sup>

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<sup>12</sup> For example, changes in planned force levels precipitated by the Department of Defense 1993 Bottom Up Review enabled appropriators in the FY1994 Act to rescind some budget authority granted for FY1990 through FY1993.

- BRAC accounts constitute a potentially large and highly variable segment of the military construction appropriation and exert an appreciable influence on the results listed here. A significant portion of the military construction appropriation between 1991 and 2001 was dedicated to funding the military base closure and realignment actions of the 1988, 1991, 1993, and 1995 BRAC rounds. This crested in 1996 at more than one-third of the total military construction appropriation. Closure and realignment actions were completed at the end of FY2001, yet the requirement for environmental remediation at BRAC sites has continued. In FY1994, for instance, three separate BRAC accounts comprised 26.7% of the total appropriation. When they are removed from consideration, an appropriation bill that had been 37.4% earmarked becomes 51.0% earmarked. In FY1996, four BRAC accounts comprised 34.9% of the appropriation. When they are removed from consideration, an appropriation that had been 26.2% earmarked becomes 40.2% earmarked. In FY1998, three BRAC accounts comprised 22.4% of the appropriation. When they are removed from consideration, an appropriation that had been 34.9% earmarked becomes 45.0% earmarked. In FY2000, a single BRAC account comprised 8.0% of the appropriation. When it is removed from consideration, an appropriation that had been 64.0% earmarked becomes 69.6% earmarked. In FY2002, the single BRAC account comprised only 6.0% of the appropriation. When it is removed from consideration, an appropriation that had been 64.1% earmarked becomes 68.2% earmarked. In FY2004, BRAC comprised 4.0% of the appropriation. When it is removed from consideration, an appropriation that had been 67.9% earmarked becomes 70.7% earmarked. In FY2005, BRAC comprised 2.5% of the appropriation. When it is removed from consideration, an appropriation that had been 66.1% earmarked becomes 67.8% earmarked. With the 2005 BRAC round about to be implemented, the need for BRAC appropriations is likely to rise in the coming years.<sup>13</sup>

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<sup>13</sup> The Defense Base Closure and Realignment Act of 1990 (10 U.S.C. §2687 note, as amended) specifies that military installation closure and realignment actions must commence within two years of BRAC recommendations entering into force and must be completed within six years. Actions from the 1995 BRAC round ended in 2001. In its FY2006 budget request, the Administration included \$2.3 billion in BRAC funding, representing 18.6% of the military construction total.

***Estimates.*** Both the Administration and the House and Senate Appropriations Committees deal with military construction at a level of detail that places a considerable portion of the appropriation within the definition of an earmark. Congress often adjusts administration-requested funding and sometimes adds projects that were not requested.

**Military Construction Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks<sup>14</sup></b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$10,003	\$6,612.5	66.1%	504
2004	\$9,316	\$6,324.4	67.9%	580
2002	\$10,500	\$6,728.4	64.1%	634
2000	\$8,374	\$5,356.9	64.0%	518
1998	\$9,183	\$3,203.2	34.9%	461
1996	\$11,177	\$2,926.3	26.2%	556
1994	\$10,065	\$3,765.5	37.4%	895

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-324), FY2004 (P.L. 108-132), FY2002 (P.L. 107-64), FY2000 (P.L. 106-52), FY1998 (P.L. 105-45), FY1996 (P.L. 104-32), and FY1994 (P.L. 103-110) Military Construction Appropriations Acts and the accompanying conference reports.

### **Contributor**

- Daniel H. Else, Analyst in National Defense, 7-4996.

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<sup>14</sup> These figures differ from earlier CRS research on this subject due to a revised methodology.

## Department of Transportation and Related Agencies Appropriations<sup>15</sup>

**Scope.** The FY2005 Department of Transportation and Related Agencies Appropriations Act was the primary legislative vehicle through which Congress oversaw the U.S. domestic transportation budget. This appropriation measure funded transportation programs managed by the Department of Transportation (DOT), as well as several small independent agencies, such as the St. Lawrence Seaway Development Corporation. It provided support for highway, aviation, transit, and railroad programs, as well as safety and research efforts. For general information on FY2005 DOT appropriations and issues, see CRS Report RL32308, *Appropriations for FY2005: Transportation, Treasury, and Independent Agencies*, coordinated by David Randall Peterman and John Frittelli.

**Earmarks.** The DOT and related agencies appropriation acts and accompanying conference reports that were examined provide funding for the numerous programs and activities of the agencies. In addition, they contain provisions that direct funding to individual projects and organizations in specific locations, hereafter referred to as earmarks. Examination of the annual DOT appropriations acts for the years covered by this memorandum show that earmarks are relatively rare in the text of the acts themselves. However, the accompanying joint explanatory statements of the conference reports on the acts contain numerous earmarks. While these explanatory statements do not have the force of law, they explain the intent of the bill language for the guidance of executive agencies and courts.

Most funding in DOT appropriation acts comes from the Highway Trust Fund, funded from fuel taxes, and is distributed to the states and recipient organizations according to formulas established in periodic DOT authorizing legislation. Decisions on how to spend formula funds are made at the state and local level, not by the Administration, though those decisions are subject to federal review. Most of the remaining funds are made available through competitive grant programs established in the DOT authorizing legislation. DOT authorizing legislation also contains directives authorizing spending on specific projects or organizations in specific locations. Unless these are specifically mentioned in DOT appropriations acts or conference reports, however, they are not included as earmarks in this analysis.

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<sup>15</sup> For FY2004 and FY2005, the Department of Transportation appropriations subcommittee and the Department of the Treasury appropriations subcommittee were combined. The Transportation and Treasury appropriations were provided by a combined Transportation, Treasury, and Independent Agencies Appropriations Act. However, for continuity with the previous years covered in this memorandum, the FY2004 and FY2005 Transportation and Treasury appropriations are treated separately.

The DOT appropriation acts and the accompanying conference reports that were examined include many congressional directives for spending precise amounts of money on specific projects or organizations in designated locations under both competitive grant programs and formula programs. For some competitive grant programs, virtually all of the funding is so directed, leaving none to be distributed to applicants through the formal grant-making process. Directives usually specify both an amount to be spent and a recipient or project to which the money is to be directed. Some directives do not specify an amount of money, but direct DOT to give priority to specific projects or recipients within a program; some do not direct but “encourage” DOT to spend a specific amount on a project in a specific location.

The term earmark appears rarely in the acts and conference reports reviewed for this memorandum, and no definition is provided in those documents. For the purposes of this memorandum, a transportation earmark is defined as a congressional directive to spend a specific amount of money (or up to a maximum level) for a specific project, or on a specific organization, in a specific location (state or locale). Cases where report language directs DOT to give priority to certain projects, but does not provide specific funding levels for the listed projects, are not counted as earmarks.

Funds for projects or organizations in specified locations are identified as earmarks regardless of their origin or current status. That is, no attempt has been made to determine whether earmarked funds were provided for projects listed in authorizing legislation, requested in the Administration budget, added by the House, Senate, or conference committee, or provided for on-going purposes. The earmark estimates also include references in the joint explanatory statement to the amount of funding increases for particular projects or organizations in specific locations.

An attempt was made in compiling the data to exclude funding for general programs and activities. The difficulty, however, in distinguishing these categories from projects and organizations in specific locations makes any such distinction subjective.

The reported figures do not include earmarks that may be found in sources other than the regular annual appropriations laws and accompanying conference reports (e.g., authorizing legislation or supplemental appropriations laws). Similarly, they do not reflect other budgetary actions that may bear on the earmarked levels (e.g., rescissions of funds). In addition, there has been no examination of the House and Senate Appropriations Committee reports on the measures enacted into law. It is worth noting that the explanatory statements for all years examined seek to incorporate by reference language included in these House and Senate Appropriations Committee reports. The explanatory statements state that report language and allocations in either the House or Senate Appropriations Committee reports that are not changed by the conference committee are approved by the conference committee. They elaborate that while the conference reports repeat some of the language in the Appropriations Committee reports for emphasis, the conference reports do not negate the language unless a change is expressly stated. Thus, House and Senate Appropriations Committee reports may contain additional provisions that could be viewed as earmarks. As a result, these tables may undercount the number of earmarks resulting from the DOT appropriations process for these years.

**New Starts Program.** Because the New Starts Program of the Federal Transit Administration (FTA) contains a list of projects in specific locations with specific amounts to be provided to each project in each appropriations report, an argument might be made that those New Starts projects should be viewed as earmarks. However, to be eligible to receive federal funding, projects must be authorized by Congress in advance and be evaluated by FTA. For this reason, New Starts projects have not been included as earmarks. For FY2005, Congress appropriated \$1.45 billion for 58 New Starts projects.

**Estimates.** The table shows a sharp increase in the number of earmarks and their total value beginning in FY2002. This reflects a major change caused by the reauthorization of the surface transportation program (the Transportation Equity Act for the 21<sup>st</sup> Century, or TEA21 (P.L. 105-178)) and the aviation program (the Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century, or FAIR21 (P.L. 106-181)). These reauthorizations affected the number of earmarks in appropriations acts. Particularly, TEA21 significantly increased the total funding for the surface transportation program and created a number of new discretionary programs under the Federal Highway Administration. As a result, the opportunity for earmarking in appropriation bills increased significantly, particularly in the highway program. At the same time, the overall amount of highway funding was increasing. Also, the FY2002 transportation appropriations act changed the custom of providing a list of airports to which priority should be given for airport grants, without assigning a dollar value to each airport. The appropriators provided a list of airports with specific dollar figures for each airport, so projects on that list are counted as earmarks, while they had not been in previous legislation. Of the roughly \$2 billion increase in transportation earmarks after FY2000, about 75% is due to highway project earmarks and 25% to airport project earmarks. This increase occurred in the context of a roughly \$9 billion increase in total DOT appropriations after FY2000.

**Disclaimer.** While an attempt has been made to comprehensively capture earmarks in accordance with the definition and methodology outlined, the figures reported here should not be regarded as definitive. The possibility of using different definitions of earmarks and methodologies to identify them and the lack of clarity of some of the language in the documents consulted could contribute to different results for other attempts to count earmarks in these DOT appropriations acts and conference reports.



**Department of Transportation and Related Agencies Appropriations<sup>16</sup>**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$58,916	\$3,268.9	5.5%	2,094
2004	\$58,795	\$3,359.2	5.7%	2,282
2002	\$59,588	\$3,218.3	5.4%	1,493
2000	\$50,116	\$1,283.7	2.6%	641
1998	\$42,186	\$1,227.2	2.9%	147
1996	\$37,011	\$789.2	2.1%	167
1994	\$38,572	\$908.6	2.4%	140

**Sources:** Number and valuation of earmarks found in the FY2005 (P.L. 108-447), FY2004 (P.L. 108-199), FY2002 (P.L. 107-87), FY2000 (P.L. 106-69), FY1998 (P.L. 105-66), FY1996 (P.L. 104-50), and FY1994 (P.L. 103-122) Department of Transportation and Related Agencies Appropriations Acts and the accompanying conference reports.

### **Contributor**

- David Randall Peterman, Analyst in Transportation, 7-3267.

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<sup>16</sup> In FY2003, the Coast Guard and Transportation Security Administration were transferred from the DOT to the newly-created Department of Homeland Security. Thus, the FY2004 and FY2005 figures are not directly comparable to those of previous years.

## Department of the Treasury, U.S. Postal Service, Executive Office of the President and General Government Appropriations<sup>17</sup>

**Scope.** The FY2005 Treasury, Postal Service, and General Government appropriation bill funded the Department of the Treasury, including the Internal Revenue Service, as well as the Executive Office of the President and a number of independent agencies. The U.S. Postal Service is designed as a self-supporting government corporation. However, under a statutory requirement, annual funding is required to replace revenue forgone. All but three of the agencies and functions under the Executive Office of the President were funded through these appropriations. Several large agencies — such as the General Services Administration (GSA), the Office of Personnel Management, and the National Archives and Records Administration — as well as a number of smaller agencies were funded through the General Government title of this appropriations bill. For information on FY2005 Treasury and General Government funding, legislative activity, and issues, see CRS Report RL32308, *Appropriations for FY2005: Transportation, Treasury, and Independent Agencies*, coordinated by David Randall Peterman and John Frittelli.

**Earmarks.** This analysis uses a definition for earmark that is limited to funding below the account level that is designated for a specific program, grant, person, or structure in a named locality.

Several bill accounts, such as those for GSA, have substantial non-appropriated funds revenue. The Federal Buildings Fund within GSA often does not receive any appropriation. However, Congress regularly directs the managers of the Fund as to the amount, primarily from these non-appropriated funds, that can be obligated for acquisition, design, construction, repair, and restoration of specific properties. Since these directives do not fall within amounts appropriated in the Act, a separate table is included below setting out the amount of Federal Buildings Fund directed obligations for these projects and the number of projects involved.

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<sup>17</sup> For FY2004 and FY2005, the Department of the Treasury appropriations subcommittee and the Department of Transportation appropriations subcommittee were combined. The Transportation and Treasury appropriations were provided by a combined Transportation, Treasury, and Independent Agencies Appropriations Act. However, for continuity with the previous years covered in this memorandum, the FY2004 and FY2005 Treasury and Transportation appropriations are treated separately.

FY1996 was an exception in that Congress directly appropriated funds for the Federal Buildings Fund and designated projects for new construction and repairs. The appropriated funds do not cover the costs of the 29 projects cited in the GSA table. Of these 29 projects, 27 were identified by location and purpose in the Act (P.L. 104-52). Because the costs and appropriations figures do not correspond<sup>18</sup> for the 27 projects, they are not included in the table showing the summary of estimated earmarks for the Treasury and General Government appropriations.

**Estimates.** Using the above definition, the FY2005 appropriation included 17 earmarks, totaling \$10.4 million out of the total appropriation of \$31.7 billion. In contrast, the first year of this comparison, FY1994, included five earmarks for \$18.5 million out of a total of \$22.5 billion. These results are shown in the table below. For GSA Federal Buildings Fund obligations for specific projects, in FY2005, 22 projects were identified totaling \$708.5 million. The Federal Buildings Fund table does not suggest a trend in expenditures for that program.

**Disclaimer.** The above estimates of earmarks should not be regarded as definitive. The study was limited to the use of the acts, conference reports, and tables which were published in the *Congressional Record* when the conference reports were under consideration. There may have been earmarks identified in House and Senate Appropriations Committee reports on the bills. If these earmarks were not in contention at the conference, they would not be addressed specifically in the conference report.

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<sup>18</sup> P.L. 104-52 provides \$82.6 million in direct appropriations to the Federal Buildings Fund in GSA. However, the 29 projects identified in the act have an aggregate cost of \$770.9 million.

**Department of the Treasury, U.S. Postal Service, Executive Office of  
the President, and General Government Appropriations<sup>19</sup>**

**Summary of Estimated Earmarks**

(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$31,659	\$10.4	0.03%	17
2004	\$31,050	\$41.3	0.13%	19
2002	\$32,493	\$70.0 <sup>a</sup>	0.22%	12
2000	\$28,240	\$41.0	0.15%	7
1998	\$25,326	\$81.4	0.32%	11
1996	\$23,164	\$4.1	0.02%	4
1994	\$22,539	\$18.5	0.08%	5

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-447), FY2004 (P.L. 108-199), FY2002 (P.L. 107-67), FY2000 (P.L.106-58), FY1998 (P.L. 105-61), FY1996 (P.L. 104-52), and FY1994 (P.L. 103-123) Department of the Treasury, U.S. Postal Service, Executive Office of the President, and General Government Appropriations Acts and the accompanying conference reports.

- a. Of this total, \$20 million represents additional funding for the High Intensity Drug Trafficking Areas (HIDTA) program over the FY2001 level. Several HIDTAs are identified as possible candidates for funding from the \$20 million.

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<sup>19</sup> In FY2003, the Bureau of Alcohol, Tobacco, and Firearms, the Customs Service, and the United States Secret Service were transferred from the Department of the Treasury to the newly-created Department of Homeland Security. Thus, the FY2004 and FY2005 figures are not directly comparable to those of previous years.

**General Services Administration Federal Buildings Funds Projects<sup>a</sup>**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total project funding</b>	<b>Number of projects</b>
2005	\$708.5	22
2004	\$1,289.5	42
2002	\$800.0	61
2000	\$71.2	12
1998	\$0.0	0
1996	\$770.9	29
1994	\$1,222.2	48

a. Most of the funding for the acquisition, design, construction, repair, and restoration of federal buildings comes from revenue to the Federal Buildings Fund. These data are included to provide information on the scale of spending for these purposes. Each project was specifically identified in either the act or the conference report.

## **Contributors**

2004-2005

- David Randall Peterman, Analyst in Transportation, 7-3267.

1994-2002

- Sharon Gressle, Specialist in American National Government (retired).

## Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations

**Scope.** The FY2005 appropriations bill for the Departments of Veterans Affairs (VA) and Housing and Urban Development (HUD), and several independent agencies — including the Environmental Protection Agency (EPA), the National Aeronautics and Space Administration (NASA), the Federal Emergency Management Agency (FEMA), the National Science Foundation (NSF), and other smaller federal entities — was generally referred to as the VA-HUD appropriations bill. The bill was one of the larger of the appropriations bills, providing \$128.6 billion for FY2005, including \$93.6 billion in discretionary spending. (The remainder was mandatory spending, primarily for VA cash benefit entitlements). Reorganization of House and Senate Appropriations subcommittees at the beginning of the FY2006 appropriations process eliminated the VA-HUD subcommittee and its separate appropriations bill. For information on FY2005 funding and a summary of issues, see CRS Report RL32304, *Appropriations for FY2005: VA, HUD, and Independent Agencies*, coordinated by Richard Bourdon and Paul Graney.

**Earmarks.** This summary defines earmarks as funds set aside within an account for a specific recipient, organization, or location, either in the appropriation act or in its conference report. One difficulty in precisely defining earmarks as they are used in VA-HUD appropriations concerns various ways the term *earmark* is referenced in conference reports accompanying the bill. In different years, and in some years in different parts of the same bill, for example, the conference report refers to *earmarks* related to allocations of existing object and sub-object classifications within larger established and enduring accounts. Although they are characterized as *earmarks*, they do not fit the definition cited above and are therefore excluded from this analysis. For the most part, the purpose of each earmark used in this summary is identified solely by its designation, and its authorization is similarly contained in the line providing the funds for the designee. Such earmark designations usually bypass standard administrative procedures for an agency's competitive distribution of funds.

Another difficulty in estimating the volume of earmarks is the large number of earmarks involving small amounts of money. The difference in individual amounts earmarked in the bill ranges from a few thousand dollars to many millions, out of a total bill of \$128.6 billion in FY2005. Given the frequent specificity of funds for water related projects in EPA, research projects in NASA, construction projects in VA, and the array of community projects within the Community Development Block Grant programs of HUD, these results should not be regarded as definitive.

**Estimates.** Using the above definition, the number of earmarks in VA-HUD appropriations reveals significant growth over the period from FY1994 through FY2005, though the dollar amount earmarked peaked in FY2002 and has declined since then. In FY1994, the conference report contained numerous references to earmarks, but the term is used almost as a synonym for "appropriations for a specific purpose within an existing account," and with no clear distinction drawn between that use and any other specific amount allocation. The FY1994 appropriations act contained perhaps as few as 30 earmarks, using the above definition, totaling \$10.0 million out of a bill appropriating \$88.4 billion. In

terms of dollars, earmarks for FY1996 increased to \$133.0 million, 13 times the FY1994 amount. The FY1998 act contained about 140 earmarked projects as defined above, totaling around \$600.0 million, of a total of \$90.7 billion. While the number of earmarks for FY2000 increased sharply from about 140 in FY1998 to 469 in FY2000, the dollar amount remained almost level, indicating the average size of earmarks had fallen considerably.<sup>20</sup>

Unlike the earlier years reviewed, the statement of managers in the conference report in recent years includes extensive lists itemizing targeted grants and allocations for specific projects and facilities under numerous accounts, including HUD Community Development Block Grants; EPA Science and Technology, Environmental Programs and Management, and State and Tribal Assistance Grants; and NASA. While the number of earmarks increased from about 1,500 in FY2002 to 2,080 in FY2005, the total dollar amount decreased by nearly half (44%) to slightly less than \$1 billion in FY2005, compared with \$1.8 billion for FY2002. As a result, earmarks as a percent of total appropriations for VA, HUD, and Independent Agencies fell from 1.6% in FY2002 to 0.8% in FY2005. The size of the average earmark has continued to fall, from a peak of about \$4.3 million in FY1998 to \$480,000 in FY2005.

Not every item on the lists mentioned in the previous paragraph were counted as earmarks in this memorandum. Some items were excluded from this analysis because the amount specified presumes a further allocation among a number of existing objects, with the agency having the discretion to determine the amounts received by each of the entities Congress assumes will qualify for funds. In general, the table below is based on a definition of earmark that restricts the term to specified amounts in which Congress has designated the specific entity authorized to receive the amount specified.

***Disclaimer.*** The above estimates and the attached table are not definitive of either the number of earmarks or the total funds involved. The possibility of using different

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<sup>20</sup> P.L. 106-113, the Consolidated Appropriations Act for FY2000, includes language that amends P.L. 106-74, the VA-HUD-Independent Agencies Appropriations Act for FY2000, to include \$8.475 million in earmarks for 11 Economic Development Initiative projects identified in the District of Columbia section of the Consolidated Appropriations Act for FY2000. The dollar total and number of projects are included in the District of Columbia Appropriations Act.

definitions of earmarks and methodologies to identify them, and the lack of clarity of some of the language in the documents consulted, could contribute to different results for other attempts to count earmarks in these acts and conference reports. Besides appropriations acts and their conference reports, determination as to how to regard or count any particular earmark might involve the consideration of report language that accompanied bills reported in either chamber, agency budget justifications, similar documents from preceding fiscal years, statutory authorization language, supplemental appropriations, and rescissions.



**VA, HUD, and Independent Agencies Appropriations**  
**Summary of Estimated Earmarks**  
(millions of current dollars)

<b>Fiscal year</b>	<b>Total appropriation</b>	<b>Total \$ value of earmarks</b>	<b>Earmarks as % of total appropriation</b>	<b>Number of earmarks</b>
2005	\$128,638	\$999.5	0.8%	2,080
2004	\$128,244	\$1,219.7	1.0%	1,776
2002	\$112,800	\$1,800.0	1.6%	1,500
2000	\$99,100	\$607.0	0.6%	469
1998	\$90,700	\$600.0	0.7%	140
1996	\$82,400	\$133.0	0.2%	48
1994	\$88,400	\$10.0	0.0%	30

**Sources:** Number and valuation of earmarks listed in the FY2005 (P.L. 108-447), FY2004 (P.L. 108-199), FY2002 (P.L. 107-73), FY2000 (P.L. 106-74), FY1998 (P.L. 105-65), FY1996 (P.L. 104-134), and FY1994 (P.L. 103-124) VA-HUD, and Independent Agencies Appropriations and accompanying conference reports.

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2005

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1994-2004

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